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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

B5

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: JAN 25 2011

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability or a member of the professions holding an advanced degree. According to Part 6 of the petition, the petitioner seeks employment as an "International Consultant for Cement and Machinery Industry." The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States. The director found that the petitioner qualifies for the classification sought, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, counsel submits a brief and additional evidence.[1] Counsel has consistently asserted that the petitioner's "extraordinary ability" and "acclaim" demonstrate his eligibility for the benefit sought. While on appeal counsel minimally addresses the legal standards for the classification sought, counsel's initial cover letter did not. Instead, counsel focused on the regulatory requirements for aliens of extraordinary ability pursuant to section 203(b)(1)(A) of the Act.

While admittedly a higher classification, the alien of extraordinary ability classification is an entirely separate classification from the one sought in this matter with its own separate regulatory requirements set forth at 8 C.F.R. § 204.5(h)(3). Adjudication of a petition filed under section 203(b)(1)(A) of the Act involves an extensive two-part evaluation of the evidence under 8 C.F.R. § 204.5(h)(3) as described in *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). Consistent with that decision, after determining whether the petitioner has submitted the evidence described in 8 C.F.R. § 204.5(h)(3), USCIS then evaluates the significance of that evidence as part of a final merits determination. *Id.* at 1119-20. Thus, the submission of evidence relating to the ten criteria set forth at 8 C.F.R. § 204.5(h)(3) does not, by itself, establish eligibility under section 203(b)(1)(A).

Significantly, USCIS is statutorily prohibited from providing unfunded adjudications under section 286 (m) of the Act. Thus, we will not evaluate whether the evidence submitted would be sufficient to establish eligibility under section 203(b)(1)(A) of the Act. If the petitioner wishes a determination

[1] On the Form I-290B, Notice of Appeal or Motion, counsel indicated that he was filing a motion to reconsider rather than an appeal. Counsel added handwritten language relevant to appeals only that he would submit a brief "to the AAO" in 30 days. Counsel cited no provision that would allow a petitioner to supplement a motion as is permitted with an appeal. The AAO received counsel's brief on January 8, 2010. The cover letter, addressed to the AAO, indicates that the submission is: "In re: Motion to Consider" but references a "Notice of Appeal." The brief itself is titled "Motion to Reconsider" and is addressed to the Texas Service Center, which would have jurisdiction over a motion in this matter. Given counsel's reference to the AAO and submission of the brief to the AAO, the AAO advised counsel that it intended to adjudicate the filing as an appeal unless counsel requested otherwise in 10 days. As of this date, more than six weeks later, this office has received nothing further. Thus, we find the filing to be an appeal.

as to whether he qualifies under section 203(b)(1)(A), the appropriate action is to submit a petition under that classification.

Regardless, the submission of evidence that allegedly relates to the regulatory criteria for a first preference classification does not create a presumption that the petitioner must qualify for a wavier of the alien employment certification process in a second preference classification. Rather, the petitioner must address the legal standards for the benefit sought. We will address those standards below.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. --
>
> > (A) In general. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of job offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

In pertinent part, section 203(b)(2) of the Act provides immigrant classification to members of the professions holding advanced degrees or their equivalent and aliens of exceptional ability and whose services are sought by an employer in the United States. An advanced degree is a United States academic or professional degree or a foreign equivalent degree above the baccalaureate level. 8 C.F.R. § 204.5(k)(2). The regulation further states: "A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree." *Id.*

Exceptional ability is defined as a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. *Id.* The regulation at 8 C.F.R. § 204.5(k)(3)(ii) sets forth six criteria, three of which must be met to demonstrate exceptional ability. One of those criteria is evidence of at least ten years of experience.

Counsel asserts that the petitioner "qualifies for this classification as he has over 41 years of experience." Counsel does not explain how the petitioner's experience alone qualifies him as either an advanced degree professional or an alien of exceptional ability.

I. Advanced Degree Professional

The record establishes that the [redacted] School for [redacted] awarded the petitioner the academic rank of engineer in 1973. The petitioner indicates on the ETA Form 750 that this credential is a bachelor's degree. The record establishes that the petitioner has more than five years of experience after 1973. Moreover, engineering is defined as a profession at section 101(a)(32) of the Act. Nevertheless, the petitioner did not submit an evaluation of his foreign degree. Thus, the record does not establish that the beneficiary's education is a foreign equivalent degree to a U.S. baccalaureate. Without a credible evaluation establishing that the beneficiary's education is the foreign equivalent degree to a U.S. baccalaureate, his subsequent experience cannot be combined with his education to equate to the equivalent of an advanced degree.

II. Alien of Exceptional Ability

The director concluded that the petitioner qualifies as an alien of exceptional ability. The regulation at 8 C.F.R. § 204.5(k)(3)(ii) sets forth the following six criteria, at least three of which an alien must meet in order to qualify as an alien of exceptional ability in the sciences, the arts, or business:

> (A) An official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability
>
> (B) Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought
>
> (C) A license to practice the profession or certification for a particular profession or occupation
>
> (D) Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability
>
> (E) Evidence of membership in professional associations
>
> (F) Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations

If a petitioner has submitted the requisite evidence, U. S. Citizenship and Immigration Services (USCIS) determines whether the evidence demonstrates "a degree of expertise significantly above that ordinarily encountered" in the arts. 8 C.F.R. § 204.5(k)(2). *Kazarian v. USCIS*, 596 F.3d at 1115, sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. While involving a different classification than the one at issue in this matter, the similarity of the two classifications makes the court's reasoning persuasive to the classification sought in this matter. In reviewing Service Center decisions, the AAO will apply the test set forth in *Kazarian*. As the AAO maintains *de novo* review, the AAO will conduct a new analysis if the director reached his or her conclusion by using a one-step analysis rather than the two-step analysis dictated by the *Kazarian* court. *See* 8 C.F.R. 103.3(a)(1)(iv); *Soltane v. DOJ*, 381 F.3d at 145; *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043 (recognizing the AAO's *de novo* authority).

An official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability

As stated above, the petitioner holds the academic rank of [redacted] Thus, he has submitted qualifying evidence under 8 C.F.R. § 204.5(k)(3)(ii)(A).

Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought

The record establishes that the petitioner has worked in his field for more than 10 years. Thus, he has submitted qualifying evidence under 8 C.F.R. § 204.5(k)(3)(ii)(B).

A license to practice the profession or certification for a particular profession or occupation

The record contains no evidence relating to the criterion set forth at 8 C.F.R. § 204.5(k)(3)(ii)(C).

Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability

The petitioner submitted a letter from [redacted] a professor at the [redacted] asserting that the petitioner's annual remuneration, including bonuses, is approximately $400,000 per year. [redacted] does not explain how he has personal knowledge of the beneficiary's remuneration. Counsel asserts that the petitioner's monthly salary from [redacted], which he owns, is 1,531,120 [redacted] or $32,000. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena,* 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano,* 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez,* 17 I&N Dec. 503, 506 (BIA 1980).

The petitioner submitted the Details of Payments made to persons at [redacted], stating that the petitioner's salary in 2008-2009 was 1,500,000 [redacted]. The document does not indicate that this salary is monthly. The petitioner did not submit the exchange rate from [redacted] to U.S. Dollars. According to [redacted] (accessed January 20, 2011 and incorporated into the record of proceedings) 1,500,000 [redacted] is currently equivalent to $32,856. The petitioner also submitted his wife's bank statements showing two deposits of 99,220 [redacted] on November 19, 2008. A handwritten notation indicates that these deposits are salary. If so, they are well below the 1,500,000 [redacted] monthly salary alleged. In fact, these amounts are far less than even one quarter of 1,500,000 [redacted] as would be expected if the deposits represented weekly wages of the amount alleged. The petitioner submitted a self-serving statement of his own net worth. This document does not establish his salary or other remuneration.

Finally, the petitioner submitted evidence that the top 10 percent of chief executives in the United States earned greater than $166,400 annually. The petitioner, however, is employed in [redacted] The petitioner did not submit evidence of comparable wages in [redacted]

As the petitioner has not submitted consistent evidence of his salary and other remuneration and evidence of comparable wages in [redacted], he has not submitted qualifying evidence that meets the plain language requirements set forth at 8 C.F.R. § 204.5(k)(3)(ii)(D).

Evidence of membership in professional associations

Counsel asserted that the petitioner is a member of professional organizations that "require outstanding achievements of their members." As stated above, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena,* 19 I&N Dec. at 534 n.2; *Matter of Laureano,* 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez,* 17 I&N Dec. at 506. We acknowledge that the regulation at 8 C.F.R. § 204.5(k)(3)(ii) does not specify that the associations must require outstanding achievements of their members. Nevertheless, it bears mention that the petitioner did not submit any evidence of the membership requirements of the associations in support of counsel's assertion.

The petitioner submitted evidence of payments for membership in the [redacted] and [redacted] the [redacted] of [redacted] and the [redacted] and Industry. This documentation does not specify that the petitioner, rather than [redacted] is the member. Thus, the petitioner has not submitted qualifying evidence under 8 C.F.R. § 204.5(k)(3)(ii)(E).

Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations

The petitioner submitted evidence that the [redacted] issued an "[redacted] Award" to [redacted] on January 21, 1999. The petitioner did not personally receive this award. Nevertheless, the [redacted], on the same date, issued the petitioner the [redacted] Award for

distinguished leadership and outstanding contribution to industry. This award constitutes qualifying evidence under 8 C.F.R. § 204.5(k)(3)(ii)(F).

In light of the above, the petitioner has submitted evidence that qualifies under three of the evidentiary criteria, those set forth at 8 C.F.R. § 204.5(k)(3)(ii)(A), (B) and (F). Thus, we must next conduct a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated that the beneficiary has "a degree of expertise significantly above that ordinarily encountered." 8 C.F.R. § 204.5(k)(2). Section 203(b)(2)(C) of the Act provides that the possession of a degree, diploma, certificate or similar award from a college, university school or other institution of learning shall not by itself be considered sufficient evidence of exceptional ability. The petitioner has not specifically demonstrated that his education, which he has not even demonstrated is the foreign equivalent to a U.S. baccalaureate, is indicative of a degree of expertise significantly above that ordinarily encountered among engineering executives. Nevertheless, the petitioner's extensive experience and 1999 recognition sufficiently support a finding that the petitioner has a degree of expertise significantly above that ordinarily encountered in the field. Thus, we uphold the director's finding that the petitioner qualifies for the classification sought as an alien of exceptional ability. This finding, however, is a separate inquiry from whether the alien employment certification process should be waived in the national interest.

III. National Interest Waiver

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of the phrase, "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states, in pertinent part:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Initially, counsel stated that the petitioner qualifies for the waiver because he has sustained national and international acclaim and his achievements have been recognized in his field over the past 40 years. As stated above, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena,* 19 I&N Dec. at 534 n.2; *Matter of Laureano,* 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez,* 17 I&N Dec. at 506. We reiterate that we will not evaluate the evidence under the regulatory criteria

counsel discusses as those criteria are only pertinent to an entirely separate visa classification. At issue is how this evidence relates to the appropriate legal standard for the benefit sought.

The interpretive precedent decision relevant to this matter is *Matter of New York State Dep't. of Transp.*, 22 I&N Dec. 215 (Comm'r. 1998) (hereinafter "NYSDOT"). Counsel has never addressed this case, even on appeal after the director extensively cited it. This published precedent decision, however, is binding on all USCIS employees pursuant to 8 C.F.R. § 103.3(c). To date, neither Congress nor any other competent authority has overturned this precedent decision.[2] Thus, we will focus on the legal interpretations set forth in that decision.

As stated above, the petitioner has submitted evidence that he qualifies as an alien of exceptional ability. By statute, however, "exceptional ability" is not, by itself, sufficient cause for a national interest waiver. *Id.* at 218. Thus, the *benefit* which the alien presents to her field of endeavor must greatly exceed the "achievements and significant contributions" contemplated for that classification. *Id; see also id.* at 222.

NYSDOT, 22 I&N Dec. at 217-18 sets forth several factors which must be considered when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, the petitioner must show that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

In response to the director's request for additional evidence and again on appeal, counsel states:

- The Labor Certification process aims at protecting skilled and unskilled workers, not individuals with the education, expertise and recognition of [the petitioner].

[2] Congress amended the Act to facilitate waivers for certain physicians. This amendment demonstrates Congress' willingness to modify the national interest waiver statute in response to *Matter of New York State Dept. of Transportation*; the narrow focus of the amendment implies (if only by omission) that Congress, thus far, has seen no need to modify the statute further in response to the precedent decision.

- The Labor Certification Process would limit [the petitioner] to only one employer. [The petitioner] has the expertise and qualifications to benefit the US as a whole by providing consultancy services to hundreds of organizations in the US and abroad. Filing a labor certification would limit the scope of contributions to one petitioning employer.

- The Labor Certification is a lengthy process. The need for professionals in the US such as [the petitioner] is immediate. [The petitioner's] contributions in his field of expertise will allow US companies to tap into the [redacted] increase exports, and generate jobs for the American population.

First, counsel mischaracterizes the aim of the alien employment certification process. By law, the labor certification process applies to advanced degree professionals and aliens of exceptional ability in addition to skilled and unskilled workers. Section 203(b)(2)(A) of the Act. Thus, the petitioner's education and experience alone are insufficient. Counsel's claims of "recognition" will be discussed below.

Second, the petitioner is the owner of a consultancy company. As consultancy companies obviously exist, it is not clear why working for a single company would limit the petitioner's proposed benefits. Regardless, the petitioner's preference to be self-employed, in and of itself, is insufficient. While self-employment will be given due consideration in appropriate cases, the inapplicability or unavailability of an alien employment certification cannot be viewed as sufficient cause for a national interest waiver; the petitioner still must demonstrate that the self-employed alien will serve the national interest to a substantially greater degree than do others in the same field. *Id.* at 218, n. 5.

Third, counsel's discussion of the need for individuals in the petitioner's occupation is not persuasive. The issue of whether similarly-trained workers are available in the U.S. is an issue under the jurisdiction of the Department of Labor. *NYSDOT*, 22 I&N Dec. at 221. Thus, we cannot consider such assertions.

Finally, the petitioner has not demonstrated that the Department of Labor's current "PERM" process is a lengthy one. Regardless, nothing in the legislative history suggests that the national interest waiver was intended simply as a means for employers (or self-petitioning aliens) to avoid the inconvenience of the alien employment certification process. *Id.* at 223.

The director found that the petitioner works in an area of intrinsic merit, packing plant consultancy for the cement and other industries. The director also accepted that the proposed benefits of the petitioner's work would be national in scope.[3] In order for us to consider these factors, however, the petitioner must do more than merely state his objective. He must specify the proposed benefits and

[3] On appeal, counsel states that the director concluded that "the benefit will be national in scope." In fact, the director explicitly stated that the "*proposed* benefit" would be national in scope. (Emphasis added.)

how they are in the national interest such that they are national in scope. Initially, counsel stated that the petitioner's objective "is to cater to the [redacted] Industry worldwide by providing consultancy services to U.S. based organizations or U.S. organizations based abroad involved in the Cement Industry." This statement does not explain what the proposed benefit will be and how it is in the national interest. As stated above, counsel subsequently stated that the petitioner's expertise "will allow US companies to tap into the Indian Market, increase exports, and generate jobs for the American population." On appeal, counsel submits an article on the challenges facing the cement industry. This article discusses the need for additional cement in the United States and does not discuss how the industry is trying to access the Indian Market or increase exports. In fact, page 5 states that the U.S. cement consumption is dependent on imports. The record lacks sufficient explanation as to what exactly the petitioner proposes to do, what the specific benefits will be and how those benefits will be national in scope.

It remains to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications. Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *NYSDOT*, 22 I&N Dec. at 218. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the petitioner's achievements, we note that original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

The petitioner initially submitted the following evidence relating to Enexco:

- An organizational chart,
- The company profile,
- Financial statements and tax documentation,
- Articles about the [redacted] Factory mentioning that [redacted] would undertake the design of the complete clinker grinding plant,

- An article by the petitioner, [redacted] in [redacted] discussing [redacted] projects for [redacted] and [redacted]
- Paid advertisements by [redacted]
- Bank letters characterizing [redacted] account as a [redacted] account,"
- Certification of conformance by [redacted] Evaluations,
- Contracts with clients,
- Client letters recommending [redacted] for a term loan,
- Letters from clients affirming [redacted] satisfactory completion of contracted projects,
- "Google" search results for [redacted] and
- Evidence that [redacted] has had displays at various trade conferences.

The record establishes that [redacted] is a successful company with satisfied clients who are willing to vouch as references for other potential clients or lenders. [redacted] also advertises in trade media and attends trade conferences and symposia as would be expected of a cement engineering firm. It is the position of USCIS, however, to grant national interest waivers on a case-by-case basis, rather than to establish blanket waivers for entire fields of specialization. *Id.* at 217. Thus, there is no blanket waiver for every successful business owner.

Counsel initially asserted that there are "hundreds" of articles about the petitioner and his work. As stated above, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena,* 19 I&N Dec. at 534 n.2; *Matter of Laureano,* 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez,* 17 I&N Dec. at 506. For the reasons discussed below, the record does not support this assertion.

First, counsel only lists four such articles. The petitioner himself, and not an independent journalist, authored one of those articles. The remaining three articles are actually about the [redacted] Factory. These articles establish only that [redacted] was contracted to work on a notable project. As stated above, we do not contest that [redacted] is a successful company. We reiterate, however, that there is no blanket waiver for every successful businessman.

Second, counsel includes paid advertisements under published material about the petitioner. Counsel states: "Please note that since [redacted] is not a Public Held Company, the need for publications are only restricted to magazines viewed by [redacted] Industry not by the market." The issue is not that the "published material" appears in publications limited to the cement industry but that they are paid

advertisements rather than independent journalistic coverage of the petitioner or [redacted]. The fact that [redacted] advertises in journals aimed at its potential customer base does not demonstrate the influence of the petitioner's work. One of the advertisements boasts the world's tallest belt bucket elevator. Even assuming that the petitioner is responsible for this innovation by his company, innovation by itself is insufficient. *Id.* at 221, n.7. The record contains no evidence that the belt bucket elevator is an especially significant innovation that has influenced the field. For example, the record contains no independent journalistic coverage of the construction of the elevator.

Third and finally, counsel asserts that the "hundreds" of articles are apparent from the "World Wide Web." The list of 276 results for a "Google" search of [redacted] is not evidence that there are hundreds of articles about the petitioner and his work. The vast majority of these results are from [redacted] own website, business directories and clients' websites. These results do not show hundreds of "articles" about the petitioner or Enexco as counsel implies.

The petitioner personally authored an article discussing [redacted] involvement in the [redacted] plant and the redevelopment of the [redacted] plant, destroyed by the December 2004 [redacted]. The petitioner notes that [redacted] completed its work on the [redacted] plant within the stipulated time limit and that the plant exceeds the guaranteed capacity. Counsel did not initially explain how this self-promotional article establishes the petitioner's influence in the field. In response to the director's request for additional evidence, counsel notes that a search on '[redacted]' produces the petitioner's article. '[redacted]' is a search engine that searches for articles available on the Internet. While '[redacted]' will list citations if they exist, the search results the petitioner provided show no citations of the petitioner's article. The fact that a broad search engine can locate the petitioner's article is evidence of the article's availability, not its influence.

The petitioner also submitted an article by another [redacted] employee entitled '[redacted]'. The undated article does not reflect the publication in which it appeared. The article, chronicling [redacted]'s history and work on the [redacted] plant, is self-promotional and cannot establish [redacted]'s influence in the field.

As discussed above, the petitioner also submitted evidence that [redacted] recognized the petitioner with the [redacted] award for distinguished leadership and outstanding contribution to industry in [redacted] and at the same event recognized [redacted] with an [redacted] Award. As stated above, [redacted] award is formal recognition for achievements and significant contributions pursuant to 8 C.F.R. § 204.5(k)(3)(ii)(F). We reiterate, however, that by statute, "exceptional ability" is not, by itself sufficient cause for a national interest waiver. *Id.* at 218. The record fails to document the specific underlying bases for the award in [redacted]. If the award simply recognizes the petitioner as the owner of a successful company, we reiterate that the national interest waiver is not a blanket waiver for successful businessmen.

In response to the director's request for additional evidence, the petitioner submitted a 2001 company profile of [redacted] in *Purchase*. The record does not reflect how many companies *Purchase* profiled in this issue or whether or not these profiles are essentially promotional advertisements prepared by the companies themselves.

The petitioner also submitted coverage of a conference in [redacted] thanking the petitioner for facilitating a trip to the [redacted] plant. This brief mention of the petitioner does not demonstrate his influence in the field as a whole.

On appeal, counsel asserts:

> [The petitioner] is a [redacted] Industry, by introducing innovations and new technologies. [The petitioner] has been a pioneer in developing the first [redacted] the design of the first [redacted] high capacity [redacted] etc. (Exhibit C).
>
> - [redacted] C/C 170M 650TPH Drive 2X220 KW [redacted] it is the tallest in the world and is being supplied to [redacted]
> - The [redacted] Packing Machine
> - [redacted]
>
> In addition, technical collaborations with globally based organizations allowed [redacted] to constantly upgrade its products profile.

We reiterate that the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. [redacted] self-promotional advertisements mention the world's [redacted] but the record lacks evidence that [redacted] innovations have had an influence on the field of cement engineering as a whole. Appellate exhibit C, referenced by counsel, includes advertisements of [redacted] products on [redacted] Once again, self-serving advertisements cannot demonstrate the petitioner's influence in the field as a whole. The record contains an article entitled [redacted] The only mention of [redacted] is as an example of one of the "number of newcomers" supplying rotopackers. The article does not single out [redacted] as having started any trends.

Finally, the petitioner submitted a single reference letter from [redacted] an [redacted] states that he "had the opportunity to evaluate [the petitioner's] qualifications through peer reference letters and industry reference materials." [redacted] does not suggest that he was aware of the petitioner's reputation and influence prior to being contacted for a reference letter.

At the outset, [redacted] asserts that the petitioner has extensive experience in a leading role for a company with a prestigious reputation. Once again, the national interest waiver is not a blanket waiver for every experienced, successful businessman. [redacted] further asserts that the petitioner "designed new equipment, which today are industry standards." As an example, [redacted] mentions the [redacted] high capacity [redacted] machine, the [redacted] various power saving equipment and cement grinding plants. [redacted] is in academia and indicates that his specialties are fluid dynamics and heat transfer. [redacted] does not explain how he has personal, first hand knowledge of the standard technology for the cement industry. He provides no examples of other companies that have been influenced by [redacted] innovations.

[redacted] then reiterates many of counsel's claims that relate more to section 203(b)(1)(A) of the Act than the benefit sought in this matter. Of concern, [redacted] repeats counsel's assertions that there are "hundreds of articles published in paper and on-line, nationally and internationally referring to [the petitioner] and his work." As discussed extensively above, however, the evidence submitted to support this assertion does not, in fact, support this assertion. Rather, the alleged media coverage consists almost entirely of advertisements and listings in on-line business directories. The remaining coverage consists of minimal references to [redacted] participation on the [redacted] project, the petitioner's own promotional articles, a promotional company profile and a single undated article in an unidentified publication by another [redacted] employee. Thus, the record does not support [redacted] conclusion that the petitioner's media coverage "exceeds almost every top executive in the cement industry both in quantity and in impact."

The Board of Immigration Appeals (the Board) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The Board also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

The opinions of experts in the field are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as we have done above, evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)).

The letter considered above primarily contains bare assertions of innovation now standard in the field without providing specific examples of how those innovations have influenced the field. Merely repeating the legal standard for the benefit sought does not satisfy the petitioner's burden of proof.[4] The petitioner submitted only a single independent letter and this letter does not suggest the author has applied the petitioner's work. The petitioner also failed to submit relevant corroborating evidence in existence prior to the preparation of the petition, which could have bolstered the weight of the reference letter.

While the petitioner's services are no doubt of value, it can be argued that any successful businessman will have provided valuable services to his clients. It does not follow that every successful business man inherently serves the national interest to an extent that justifies a waiver of the job offer requirement. The record lacks evidence that the petitioner has had a degree of influence in the [redacted] trade.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by an alien employment certification certified by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.

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[4] *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). Similarly, USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States,* 745 F. Supp. 9, 15 (D.C. Dist. 1990).